

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1150 of 1987

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF KALYANJI MAVJI

Versus

THACKER KASTURBEN BHAGVANJI

Appearance:

MR CH VORA for Petitioners

MR AR THACKER for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. This is a revision application under section 29(2) of the Bombay Rent Act at the instance of the original defendants-tenants, who were sued by the respondent-plaintiff-landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The landlord sued the tenants for a decree of eviction on three grounds viz. that the landlord required the premises reasonably and bonafide for his own use (in terms of section 13(1)(g) of the Act), that the tenant has acquired another suitable residence within the

meaning of section 13(1)(1) of the Act, and that the tenant is guilty of illegal subletting in favour of the second defendant.

3. The trial court, after appreciation of the evidence on record, found against the landlord on all the three grounds, and hence dismissed the suit in toto.

4. The landlord, therefore, filed an appeal under section 29(1) of the said Act. In the said appeal, it appears that the ground of reasonable and bonafide requirement of the landlord within the meaning of section 13(1)(g) was not pressed and therefore was not dealt with by the lower appellate court. However, on the issue of illegal subletting and the tenant having acquired another suitable residence, the lower appellate court, on a reappraisal of evidence, found in favour of the landlord on both the grounds, and therefore passed a decree of eviction against the tenants. Hence the present revision.

5. On the issue of illegal subletting by the first defendant in favour of the second defendant, I have carefully perused the relevant portions of the lower appellate court judgement and have heard the learned counsel for the petitioner on this aspect.

5.1 In this context I may only remark that the treatment accorded to the evidentiary material on record and the conclusions drawn by the lower appellate court therefrom are not as lucid and clear as they could have been. However, there is absolutely no doubt or confusion as to the finding of fact ultimately recorded by the lower appellate court, and the reasons for recording such findings. I am in general agreement with the findings so recorded by the lower appellate court. However, I am not inclined to attach much importance to this aspect of the matter inasmuch as the other ground on which the lower appellate court has passed a decree for eviction viz. under section 13(1)(1) of the said Act, is not only of considerably greater importance and significance, but is also far more fundamentally sound.

6. There is no substantial controversy on the basic facts. The rent note Exh.39 dated 21st November 1956 describes the premises rented out to the tenant. The rented premises consists of ground floor and upper floor, the ground floor being enclosed by a Deli. On the ground floor there is one room and Osari. The said Osari also houses a kitchen. On the first floor there is only one room. In substance, therefore, the rented premises

consists of two rooms and an Osari containing the kitchen.

6.1 As against this, there is no dispute that the tenant has acquired another house by sale deed dated 9th October 1970 at Exh.33. On the ground floor of this newly acquired premises there are three rooms, a kitchen, a bath room plus Angna land in front. The ground floor is enclosed by a Deli. The first floor also consists of three rooms, kitchen and bath room. There is further a store room below the staircase and a latrine and a bathroom in the passage. Furthermore, there is a gallery and a terrace above the first floor of the house. On a simple basic comparison of the rented premises with the premises acquired by the tenant, it will be seen that the newly acquired premises are more than three times or perhaps four times in terms of area.

7. So far as the comparative facilities are concerned, the rented premises had only one room on the ground floor and one room on the upper floor with an Osari containing the kitchen. It is to be noted that the rented premises did not have an independent bathroom or lavatory. As against this, the newly acquired premises are not only far extensive in area, but also have many other facilities and amenities. In the newly acquired premises, both the ground floor as also the first floor each contains a kitchen. Furthermore, both the ground floor and the first floor have an independent bathroom, as also an independent and additional latrine and bathroom in the passage. Furthermore, there is a store room below the staircase. The newly acquired premises also has facility of a gallery and a terrace above the first floor. It is, therefore, obvious that the newly acquired premises are not only 3 to 4 times the area of the rented premises, but have many other amenities and facilities which the rented premises did not have. On these facts it cannot possibly be urged as is sought to be urged before me that the newly acquired premises are not "suitable".

8. In the context of this contention it must also be noted that not the slightest evidence has been led or even attempted to be led by the tenant to establish as to how or in what manner the newly acquired premises are not suitable. The only contention raised in the context of the suitability of the premises is in the context of the number of persons required to be accommodated by the tenant, in the context of his large family. To my mind it makes no difference as to how large a family the tenant has in terms of the number of persons. The very

same family which could accommodate itself in the rented premises can certainly accommodate itself without any difficulty in a house which is 3 to 4 times in area and also has many other additional amenities and facilities.

9. In the premises aforesaid I am satisfied that the judgement and decree of eviction passed by the lower appellate court is eminently sustainable and does not require interference by way of the present revision. This revision is, therefore, liable to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

10. At this stage learned counsel for the petitioners prays for some time to vacate the premises. In view of the relevant facts and circumstances, I am of the view that six months time is more than sufficient. Accordingly it is directed that the decree in question shall not be executed upto 8th January 2001, subject to the condition that each of the petitioners file the usual undertaking in this court latest by 26th July 2000. It is clarified that there shall be no extension of the period for filing the undertaking. If the undertaking is not filed by due date, the relief against execution shall stand vacated ipso facto without any further orders.
